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Draft report of the International Law Commission on the work of its fiftieth session

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Chapter III

Specific issues on which comments would be of particular interest to the Commission

1. In response to paragraph 12 of General Assembly resolution 52/156 of 15 December 1997, the International Law Commission would like to indicate the following specific issues for each topic on which expressions of views by Governments either in the Sixth Committee or in written form would be of particular interest in providing effective guidance for the Commission on its further work.

A. Diplomatic protection

2. The Commission would welcome the comments and observations by Governments on the conclusions drawn by the Working Group contained in paragraph ... of the report.

3. The Commission would also request Governments to provide the Commission with the most significant national legislation, decisions by domestic courts and State practice relevant to diplomatic protection.

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B. Unilateral acts of States

4. The Commission would welcome comments on whether the scope of the topic should be limited to declarations, as proposed by the Special Rapporteur in his first report, or whether the scope of the topic should be broader than declarations and should encompass other unilateral expressions of the will of the State.

5. Comments are also welcome on whether the scope of the topic should be limited to unilateral acts of States issued to other States, or whether it should also extend to unilateral acts of States issued to other subjects of international law.

C. International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities)

6. Given the fact that the Commission intended to separate activities that have a risk of causing significant harm from those that actually cause such a harm for the purpose of developing and applying the duty of prevention, the question arises as to the kind of regime that is or should be made applicable to the latter type of activities.

7. It is generally understood so far that the duty of prevention is an obligation of conduct and not of result. Accordingly, it is suggested that non-compliance with duties of prevention in the absence of any damage actually occurring would not give rise to any liability. Now that the Commission decided to recommend a regime on prevention, separating the same from a regime of liability, should the duty of prevention be treated as an obligation of conduct or failure to comply be responded with suitable sanctions under the law of State responsibility or civil liability or both where the State of origin and the operator are both accountable for the same? If the answer to the latter question is in the affirmative, what type of sanctions are appropriate or applicable?

8. Now that the Commission completed its work on the duty of prevention, should it deal with the regime of liability as earlier envisaged because of the integral link established under the original scheme of the topic? Alternatively, should the topic of liability be treated as an entirely distinct and different topic not linked to the duty of prevention?

9. What form should the draft articles take – a convention, framework convention or a model law?

D. State responsibility

10. With respect to part one of the draft, is all conduct of an organ of a State attributable to that State under article 5, irrespective of the *jure gestionis* or *jure imperii* nature of the conduct?

11. As regards part two of the draft, what is the appropriate balance to be struck between the elaboration of general principles concerning reparation and of more detailed provisions, in particular relating to compensation?

E. Nationality in relation to the succession of States

12. The Commission would welcome comments on the question raised in paragraph 11 of the report of the Working Group (see annex) as regards the future of the second part of the topic of nationality in relation to the succession of States dealing with legal persons.

13. The Commission further wishes to reiterate its request to Governments for written comments and observations on the draft articles on nationality of natural persons in relation to the succession of States adopted on first reading in 1997, so as to enable it to begin the second reading of the draft articles at its next session.

F. Reservations to treaties

14. The Commission would welcome comments and observations by Governments on whether unilateral statements by which a State purports to increase its commitments or its rights in the context of a treaty beyond those stipulated by the treaty itself, would or would not be considered as reservations.

15. The Commission would appreciate receiving any information or materials relating to State practice on such unilateral statements.